

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1135 Cargo Chassis
SPONSOR(S): Bucher
TIED BILLS: **IDEN./SIM. BILLS:** SB 2452 (s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Highway Safety (Sub)	5 Y, 4 N	Pugh	Miller
2) Transportation			
3) Transportation & Econ. Devel. Approps. (Sub)			
4) Appropriations			
5)			

SUMMARY ANALYSIS

Florida has 14 public ports, owned by local-government port authorities, and an estimated 102 special-generator, privately owned ports. The maritime activities of seaports are regulated by the federal government, not the state.

Pursuant to chapters 207 and 316, F.S., the Florida Department of Transportation's Motor Carrier Compliance Office (MCCO) enforces state and federal laws and rules regulating the safety of commercial motor vehicles and their drivers, and the weight and size of commercial vehicles operating on the state's highways. Most of Florida's motor carrier statutes are based on those of Chapter 49, U.S. Code.

Pursuant to federal law, motor carriers are responsible for the inspection, repair and maintenance of motor vehicles under their use or control. In recent years, commercial drivers and motor carriers have raised concerns about the legal responsibility for unsafe intermodal chassis which they don't own, but which are loaded onto their vehicles at seaports. Some representatives of the trucking industry have claimed they are being cited unfairly and fined by law enforcement officers because of these unsafe chassis. Seaport terminal operators or shipping companies typically own these intermodal chassis or trailers, but since the chassis don't meet the federal definition of "motor carrier," the terminal operators and shippers claim they aren't legally subject to the motor carrier laws.

The Federal Motor Carrier Safety Administration, which had been working on cargo chassis safety rules since 1999, withdrew from rulemaking in December 2003, saying there is insufficient data linking the mechanical conditions of cargo chassis with commercial motor vehicle accidents. However, the U.S. Department of Transportation has announced a new cargo chassis safety inspection program and Congress is considering two related bills.

HB 1135 seeks to shift more responsibility for inspecting and repairing unsafe intermodal chassis, and ensuring they aren't used on Florida highways, to the seaport terminal operators. The bill creates a number of requirements for terminal operators, and directs the Florida Department of Transportation (FDOT) and the Florida Highway Patrol to conduct inspections of intermodal chassis at seaports, as well as inspect the terminals' records to determine their compliance with this act's requirements. The bill creates penalties for terminal operators who fail to comply with the provisions of this act. It also specifies that commercial drivers and motor carriers still must comply with all current state and federal trucking regulations.

HB 1135 has an indeterminate fiscal impact. It raises no apparent constitutional issues. The bill takes effect upon becoming a law.

(NOTE: At its March 24, 2004, meeting, the House Highway Safety Subcommittee adopted six amendments to HB 1135, then voted 5-4 to report the bill favorably as amended. See "IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES" below.)

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1135a.tr.doc
DATE: March 25, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|------------------------------|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a “no” above, please explain:

Reduce Government

HB 1135 does not reduce government because it gives additional responsibilities to FDOT and the Florida Highway Patrol – to enforce proposed intermodal chassis inspection requirements – that are intended, in part, to improve highway safety.

B. EFFECT OF PROPOSED CHANGES:

Background

Pursuant to chapters 207 and 316, F.S., FDOT’s Motor Carrier Compliance Office enforces state and federal laws and rules regulating the safety of commercial motor vehicles and their drivers, and the weight and size of commercial vehicles operating on the state’s highways. The Florida Highway Patrol, which is a unit of the Florida Department of Highway Safety and Motor Vehicles, has a primary purpose of enforcing highway safety and traffic laws in chapter 316, F.S.

Commercial motor carriers and commercial drivers are responsible, under chapter 49, U.S. Code, for the safe operation, inspection, repair, and maintenance of the vehicles under their control or use. Drivers or motor carriers, based on the circumstances, are cited by FDOT’s motor carrier officers for violations of these regulations, even if they do not own the vehicles or related equipment found to be not in compliance.

At least as far back as 1997, the American Trucking Association, the Teamsters Union, and other trucking-related entities that haul freight offloaded from ships have expressed concerns about what they consider to be an unfair loophole in chapter 49, U.S. Code. At seaports throughout the country, truckers wait to pick up their freight on intermodal chassis carrying the cargo container or load. The American Trucking Association estimates there are at least 750,000 intermodal chassis in use on U.S. highways. An “intermodal chassis” is a framelike, commercial trailer upon which a container is temporarily fastened for transportation on roadways. These chassis typically are owned either by the shipping companies, the seaport terminal operators (which may be representatives of shipping companies), or the railroad companies.

While shipping companies and railroad companies own or lease the intermodal chassis and schedule its usage, they do not fit the federal definition for motor carrier, and so are not technically responsible for the condition of their equipment under federal safety regulations. Depending on the entity, the owners affix the annual inspection sticker on the chassis equipment, which constitutes an act of certification that the equipment was inspected in detail at least once a year. Periodic maintenance is done by contractual arrangement, typically by the terminal operators, in the case of seaports.

Meanwhile, the Federal Motor Carrier Safety Administration (FMCSA) decided in December 2003 to withdraw from rulemaking on the subject of cargo chassis safety requirements. Rulemaking began in 1998, and the comment period had extended at least twice to hear from all the interests involved: trucking companies, drivers, seaports, and railroad associations.

According to a notice in the Federal Register published December 31, 2003:

“the (FMCSA) agency has determined that it would be inappropriate to move forward with a Notice of Proposed Rulemaking at this time. FMCSA believes there is insufficient data concerning the relationship between the mechanical condition of intermodal container chassis and trailers, and commercial motor vehicle accidents to quantify the extent to which the condition of the container chassis or trailers contributed, in whole or in part, to accidents.”

Earlier this year, U.S. DOT Secretary Norman Mineta announced a new intermodal cargo chassis inspection program modeled on the existing safety inspection program for motor carriers. One of the goals is to require each owner of cargo chassis to obtain a USDOT identification number for each chassis and display it in visible location. Staff of the Federal Carrier Motor Carrier Safety Administration said this new program is still in development.

In addition, U.S. Senate Bill 1776 and U.S. House Bill 2863, relating to cargo chassis inspections, have been filed. The bills are similar, in that they place responsibility on the cargo chassis “controllers,” defined as entities that have a legal right, title, or interest in, the equipment, to ensure that the chassis are in good working order. Both bills would require these controllers to reimburse commercial haulers for actual expenses incurred and time wasted in exchanging an out-of-compliance chassis for an approved chassis, and provides fines and penalties for controllers in certain circumstances. Federal motor carrier compliance officers would be empowered to conduct inspections of controllers’ chassis safety operations.

Effect of HB 1135

Based on the successful 2002 California legislation, HB 1135 creates regulations regarding intermodal chassis safety inspections, required to be performed by “ocean marine terminal operators.” These chassis must meet all safety requirements imposed by chapter 49, C.F.R., and inspections must be performed by certified inspectors on a routine basis. Chassis must be given a green tag if they pass the inspection and a red tag if they fail. Terminal operators may not intimidate or harass inspectors who fail to pass as “safe” a chassis, or drivers who refuse to accept a chassis for safety reasons or who contacts a law enforcement officer for an inspection.

The terminal operator must maintain records of each inspection for 90 days at the terminal, while repair records must be maintained for two years. These records must be made available to FDOT or the Florida Highway Patrol, upon request. In addition, FDOT is directed to conduct random, but at least biannual, inspections of the terminals to determine compliance with HB 1135. The Florida Highway Patrol or other law enforcement officers may enter port property and conduct inspections of chassis.

HB 1135 creates several penalties for terminal operators who fail to comply with the bill’s provisions:

- \$500 per occurrence for each chassis that is green-tagged, but which law enforcement officers upon inspection determine has safety defects.
- \$100 a day that the terminal fails to comply with this act. After 10 days, FDOT will immediately pursue administrative or other action against the terminal operator’s property permit and forward a recommendation to the Federal Motor Carrier Safety Administration for administrative action.
- \$100 an hour to be paid to any truck driver who has to wait at least an hour for a replacement chassis.
- Other penalties as provided by law.

It also specifies commercial drivers and motor carriers still must comply with all current state and federal trucking regulations.

The bill takes effect upon becoming a law.

C. SECTION DIRECTORY:

Section 1: Creates definitions for “ocean marine terminal” and “intermodal chassis” or “chassis,” as used in this act.

Section 2: Requires all ocean marine terminals that receive and dispatch intermodal chassis to implement a “chassis” roadability inspection program, in lieu of any inspections required by law for motor carriers or motor vehicles. Specifies no ocean marine terminal operator shall provide to a commercial motor carrier an intermodal chassis that does not comply with federal motor carrier regulations. Specifies that nothing in this act shall supersede those requirements. Establishes a maximum \$500 fine for violators

Section 3: Creates the intermodal chassis roadability inspection program. Requires all ocean marine terminal operators to inspect all chassis before a container is placed on the chassis and before the chassis is released for operation. Specifies minimal certification requirements for inspectors. Specifies each inspection shall be recorded on a daily report that includes certain information. Prohibits ocean terminal operators from threatening, coercing, or otherwise retaliating against inspectors who refuse to pass a chassis that is out of compliance. Specifies tagging process. Specifies that no chassis shall be released to a motor carrier to be operated on the highways of this state unless it has passed an inspection and is properly tagged. Allows drivers who suspect a chassis is unsafe to request an inspection, or to contact a law enforcement agency. Specifies if the driver has to wait for at least one hour for a chassis, then the ocean marine terminal operator shall compensate the driver \$100 an hour. Prohibits ocean terminal operators from threatening, coercing, or otherwise retaliating against drivers for requesting a chassis inspection or contacting a law enforcement officer. Provides penalties.

Section 4: Provides for maintenance and inspection of chassis-inspection records.

Section 5: Directs FDOT to conduct random, but at least biannual, onsite reviews of ocean marine terminals to determine whether such terminals are complying with this act. Specifies penalties. Allows Florida Highway Patrol officers, or other law enforcement officers, to enter ports and perform chassis inspections.

Section 6: Specifies that any contract between an owner or lessee of an intermodal chassis and a driver that contains a hold-harmless or indemnity clause concerning defects in the intermodal chassis is declared null and void as against public policy. Clarifies that this provision does not apply in cases of neglect or willful failure of the motor carrier or its driver to operate the commercial vehicle in a safe manner.

Section 7: Gives FDOT the authority to adopt rules to implement this act.

Section 8: Specifies that nothing in this act shall relieve a commercial driver or commercial motor carrier from state and federal regulations regarding safe operation of vehicles.

Section 9: Provides this act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. HB 1135 includes a \$100-a-day fine for ocean marine terminal operators who fail to comply with the provisions of the bill, and a maximum \$500-per-occurrence fine for each intermodal chassis tagged as safe but which actually is not in compliance. It is impossible to determine how

much revenue would be generated by these fines, because no similar violations, upon which one could draw comparisons, exist today.

In addition, the bill does not specify which agency is to receive the revenues from these fines and how such revenues may be used. If the fines are considered civil traffic penalties, the revenues would be distributed pursuant to s. 318.21, F.S., to local governments, the state general revenue fund, and various state trust funds.

2. Expenditures:

Indeterminate. HB 1135 gives new or expanded responsibilities to FDOT and the Florida Highway Patrol, so it is likely that administrative, training and manpower costs would be incurred

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. HB 1135 does not address what liability or costs the local governments that own Florida's 14 deep-water public ports might incur if a terminal operator violates the bill's provisions

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. Terminal operators of Florida's public and private ports may incur some costs because of the increased safety and weight inspection requirements of HB 1135, as well as from the new penalties for non-compliance or making commercial drivers wait at least an hour for certified-safe intermodal chassis.

Commercial drivers and motor carriers may benefit from the provisions of HB 1135 that defray their costs of waiting for certified-safe intermodal chassis.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This mandates provision is not applicable to HB 1135 because the bill does not require counties or municipalities to expend local funds or to raise local funds, nor does it reduce their state revenue-sharing.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 7 of HB 1135 gives FDOT specific authority to adopt rules to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Law enforcement/drafting issues

FDOT Lines 56-60 of HB 1135 specify that the “intermodal chassis roadability inspection program” described in the bill is “in lieu of any inspection required by law for motor carriers or motor vehicles” could be considered too broad of a statement, in that it may be interpreted to mean FDOT’s motor carrier officers couldn’t weigh and otherwise inspect commercial intermodal chassis on the highways. If the sponsor’s intent is to replace the current federal requirements for periodic chassis inspection by terminal operators, then perhaps the sentence should be redrafted.

Lines 171 and 216 give the Florida Highway Patrol specific authority to review chassis inspection records on file at the port and to enter port property to conduct chassis inspections – tasks which Florida troopers currently are not required to do, nor have the training to perform.

On page 206, a reference is made to terminal operator’s “property permit.” It is unclear to the MCCO what this term means.

Finally, HB 1135 does not identify the trust fund where the fines and other penalties assessed the port terminal operators for non-compliance would be deposited, which agency or agencies might share the revenues resulting from the fines, nor how the revenues can be spent.

Other comments

The Florida Trucking Association supports HB 1135. FDOT motor carrier compliance staff and Florida Ports Council staff have raised questions about the bill’s provisions.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

At its March 24, 2004, meeting, the Highway Safety Subcommittee adopted without objection six amendments to HB 1135 that were offered by the bill’s sponsor. Briefly:

- o Amendment #1: Deleted provision that the bill’s chassis inspection program is in lieu of all other motor -carrier inspection regulations.
- o Amendment #2: Specifies that fines and penalties imposed under this act shall be deposited in the State Transportation Trust Fund to administer this program.
- o Amendment #3: Clarifies that drivers dissatisfied with the chassis provided them by a terminal operator should contact FDOT’s law enforcement officers, not any police officer.
- o Amendment #4: Deletes reference to FHP, which doesn’t have the training to conduct cargo chassis inspections.
- o Amendment #5: Broadens definition of “ocean marine terminal” to include those that lease, rent, or otherwise provide cargo chassis to commercial truckers.
- o Amendment #6: Revises several portions of Section 5 of the bill. Deletes references to FHP conducting twice-yearly inspections at seaports. Clarifies that FDOT’s motor carrier compliance officers are responsible for enforcing this act and conducting annual inspections. Deletes references to “motor carrier property permit,” which doesn’t exist in Florida. Establishes an out-of-service order for marine terminal operators and an administrative hearing process for those who wish to contest the order.

The subcommittee then voted 5-4 to report the bill favorably as amended.